

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
GENESIS COMMUNICATIONS	)	
INTERNATIONAL, INC.,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. E-98-20
	)	
PACIFIC BELL,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 17, 2000; Released: February 22, 2000**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this order, we deny a complaint filed by Genesis Communications International, Inc. (Genesis) against Pacific Bell (Pacific) seeking reimbursement of certain End User Common Line (EUCL) charges. Genesis resold Pacific's local exchange service in California. Pacific billed Genesis EUCL charges for such service. Genesis contends that Pacific should have charged a lower EUCL rate to Genesis, because some of Genesis's customers qualified for federal and state telephone assistance programs. Genesis contends that Pacific's actions violated a Commission order, Pacific's tariff,<sup>1</sup> and section 203(c) of the Communications Act, as amended (Act).<sup>2</sup> Genesis

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<sup>1</sup> All references to Pacific's tariff are to its F.C.C. Tariff No. 128 as it was in effect between October 1996 to September 1997.

<sup>2</sup> 47 U.S.C. § 203(c).

asks that the Commission order Pacific to reimburse Genesis for the alleged overcharges. For reasons explained below, we deny the complaint.<sup>3</sup>

## II. BACKGROUND

2. Under Part 69 of the Commission's rules, local exchange carriers (LECs) are able to recover some portion of the non-traffic sensitive costs of providing interstate access to long-distance carriers by charging end users and resellers a EUCL charge.<sup>4</sup> The Commission's Lifeline program has existed for many years, and reduces phone bills for low-income consumers by allowing LECs in participating states to waive a portion of the EUCL charge. The charges at issue in this complaint all were assessed prior to the broad changes that the Commission made to its Lifeline program in response to the Telecommunications Act of 1996 (1996 Act).<sup>5</sup> Under the Commission plan at issue, a LEC could forgo charging qualifying end users one half of the EUCL charge.<sup>6</sup> To the extent EUCL charges were waived, LECs were entitled to reimbursement from the Lifeline Assistance Fund, which was administered by the National Exchange Carriers Association (NECA).<sup>7</sup> The Commission's Lifeline program worked in conjunction with state programs, including California's Universal Lifeline Telephone Service (ULTS) program. Under California's program, LECs could also forgo charging qualifying end users one-half of the EUCL charge and seek reimbursement from California's ULTS funds. The net result of the Commission and California programs was that qualifying end users need not pay any EUCL charge, while LECs were reimbursed in full for the waived EUCL charges from federal and state funds.

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<sup>3</sup> On September 29, 1998, after the record was closed, Pacific requested leave to file a supplemental memorandum and attached order of the California Public Utilities Commission instituting a rulemaking proceeding to consider modifications to its Universal Lifeline Telephone Service program. In light of our action herein, Pacific's motion is considered moot. We have neither considered the tendered documents nor made them part of the record for decision.

<sup>4</sup> *See generally Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 15998 (1997). *See also* 47 C.F.R. § 69.104(a). Unless otherwise indicated, all C.F.R. cites herein are to the 1996 version, which is applicable to the events at issue here.

<sup>5</sup> At issue here is the Lifeline program as it existed before the rules set forth in 47 C.F.R. § 54.400 took effect on January 1, 1998.

<sup>6</sup> *See Federal-State Joint Board on Universal Service*, 13 FCC Rcd 1, n.2 (Com.Car.Bur.1997).

<sup>7</sup> *See id.*; 47 C.F.R. § 69.603(d).

3. Genesis is a competitive local exchange carrier (CLEC) located in California and a reseller of Pacific's local exchange service in California. Pacific, an incumbent local exchange carrier (ILEC), billed Genesis the EUCL charge specified in Pacific's tariff for resold service between October 1996 and September 23, 1997. Genesis states that it waived the \$3.50 monthly per line EUCL charges for those of its residential customers who were eligible for lifeline assistance under the Commission's Lifeline program and California's ULTS program.<sup>8</sup> Genesis received reimbursement for half of the waived charges from California's ULTS funds. Genesis did not apply to NECA for reimbursement of the remainder of the waived charges until September of 1997. At that time, NECA informed Genesis that it would not be eligible for reimbursement until it first received eligibility certification from this Commission. Genesis received such certification on September 23, 1997.<sup>9</sup> NECA then began making prospective reimbursement payments but did not reimburse Genesis retroactively for EUCL charges Genesis had waived before it became certified. Genesis now seeks payment from Pacific for the amount of waived EUCL charges for which Genesis has not been reimbursed by NECA.

### III. DISCUSSION

4. According to Genesis, Pacific overcharged it by billing unreduced EUCL charges in connection with the resale services purchased by Genesis before September 1997.<sup>10</sup> However, the Commission's *Local Competition Order*<sup>11</sup> and section 51.617(a) of the Commission's rules do not appear to have required a wholesaler (such as Pacific) to charge resellers (such as Genesis) the discounted rate, regardless of whether the end user was entitled to a partial waiver of the charge.<sup>12</sup> The Commission determined that because the wholesaler does not have a "direct commercial

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<sup>8</sup> See Reply Brief dated July 2, 1998, at 2. We have fully considered Genesis's Reply Brief even though, contrary to the certification of service attached thereto, it does not appear that any copy of the pleading was delivered to the Office of the Secretary. To the extent that section 1.4(f) of the Commission's Rules, 47 C.F.R. § 1.4(f), may be applicable in this connection, we waive the rule. Genesis's Reply Brief has been placed in the official file.

<sup>9</sup> See letter from Peyton L. Wynns, Chief Industry Analysis Division, Common Carrier Bureau, to Ms. Mary Anne Kremicki, Corporate Controller, Genesis Communications International, Inc. (Sept. 23, 1997) (Complaint at Att. B, Ex. 3).

<sup>10</sup> Genesis does not challenge NECA's decision to provide reimbursement on a prospective basis only.

<sup>11</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*).

<sup>12</sup> See *id.*, 11 FCC Rcd at 15982-84 (Act requires that ILECs continue to receive access charge revenues when local services are resold under section 251(c)(4)); 47 C.F.R. § 51.617(a)(1997) (ILECs shall assess EUCL charges upon requesting carriers that purchase telephone exchange service for resale).

relationship" with the end user, the wholesaler lacks sufficient knowledge about the end user to apply any appropriate discount.<sup>13</sup> Because a wholesaler does not have direct knowledge whether a particular end user is entitled to Lifeline support, the Commission's rules left that task to the reseller. Here, the reseller, Genesis, not the wholesaler, Pacific, had the requisite relationship and knowledge to apply and correctly bill the EUCL charge and any appropriate discounts.

5. We find unavailing Genesis's reliance on a statement in the *Local Competition Order* that the specific EUCL charge imposed by the wholesaler depends upon the identity of the end user served by the reseller. That language, as well as the language in section 51.617(a) of the Commission's rules,<sup>14</sup> refers to the different kinds of EUCL charges identified in section 69.104 of the rules, (e.g., those applicable to residential lines as distinguished from multi-business lines) and not to the discount or rebate for which an individual end user might have been eligible.<sup>15</sup> Such an approach is consistent with the Commission's determination in the *Local Competition Order* that wholesalers would not know the specific circumstances of a reseller's customer. Accordingly, we find that neither the *Local Competition Order* nor the Commission's rules support Genesis's claim.

6. Genesis also contends that Pacific violated Section 4.6(K) of its tariff, which provided, in pertinent part:

When an End User is provided a local residence exchange service and if the residential local exchange rate for such End User is a reduced residential local exchange rate based upon a means test that is subject to verification, the applicable End User Common Line (EUCL) Residence Subscriber-Individual line or trunk rate in 4.7(A) following shall be reduced by 50 percent.<sup>16</sup>

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<sup>13</sup> *Local Competition Order*, 11 FCC Rcd at 15983.

<sup>14</sup> Section 51.617(a) provided that:  
[n]otwithstanding the provision in § 69.104(a) of this chapter that the end user common line charge be assessed upon end users, an incumbent LEC shall assess this charge . . . upon requesting carriers that purchase telephone exchange service for resale. The specific end user common line charge to be assessed will depend upon the identity of the end user served by the requesting carrier.  
47 C.F.R. § 51.617(a).

<sup>15</sup> The different kinds of EUCL charges that were then mentioned in section 69.104 included residential, single-line business, multi-line business, Centrex, and public telephone.

<sup>16</sup> Tariff FCC No 128, § 4.6(K) (Complaint at Att. B, Ex. 2).

Genesis contends that this tariff provision required Pacific to charge Genesis one-half of the EUCL charge for those customers who qualified for the Lifeline and ULTS programs.

7. We disagree. Section 4.6(K) applied only when Pacific provided service directly to end users. Even if, *arguendo*, a reseller could be viewed as an "End User" under the tariff, Section 4.6(K) would still be inapplicable because it required that "the residential local exchange rate *for such End User* is a reduced residential local residence exchange rate based upon a means test that is subject to verification."<sup>17</sup> Genesis, as a resale carrier, would not be the appropriate entity to undergo the means test envisioned in Section 4.6(K).

8. Nor could the reseller's customer properly be viewed as the "End User" under the tariff provision. The reseller's customer was not "provided a local residence exchange service" by Pacific, but rather by Genesis. The Commission has recognized that an ILEC, like Pacific, does not have a "direct commercial relationship" with a reseller's customers.<sup>18</sup> Instead, such customers purchase service from the reseller under the reseller's tariff. Particularly when viewed against the backdrop of the governing Commission rules, it is clear that the tariff provision is addressing the EUCL charges that Pacific will impose on its *own* customers. Accordingly, we find no support for Genesis's claim that Pacific violated Section 4.6(K) of its federal tariff.

#### IV. CONCLUSION

9. For the reasons stated above, we deny Genesis's complaint. We find no support for Genesis's claim that Pacific violated the Commission's *Local Competition Order*, Pacific's tariff, or section 203(c) of the Communications Act by billing Genesis for the EUCL charges specified in Pacific's FCC tariff. We find that, in order to have recovered any amounts to which it may have been entitled under the Lifeline Assistance Fund, Genesis should have proceeded in accordance with the applicable federal requirements in a timely manner.

#### V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 208, and authority delegated by Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the Reply Brief By Genesis Communications International, Inc., dated July 2, 1998 and received July 6, 1998, IS ACCEPTED as part of the record.

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<sup>17</sup> *Id.* (emphasis added).

<sup>18</sup> *Local Competition Order*, 11 FCC Rcd at 15983.

11. IT IS FURTHER ORDERED, pursuant to Sections 4(i), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 208, and authority delegated by Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the above-captioned complaint filed by Genesis Communications International, Inc. against Pacific Bell on February 2, 1998, IS DENIED.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 208, and Section 1.728(a) of the Commission's Rules, 47 C.F.R. § 1.728(a), and authority delegated by Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, and in light of our action herein, that the Request for Leave to File Supplemental Memorandum filed by Pacific Bell on September 29, 1998, IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau